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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-third session

SUMMARY RECORD OF THE 574th MEETING

Held at the Vienna International Centre, Vienna,
on Wednesday, 23 March 1994, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

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General exchange of views (continued)

Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union (continued)

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The meeting was called to order at 10.10 a.m.

GENERAL EXCHANGE OF VIEWS (continued)

1. Mr. ARIZAGA (Ecuador) said that the exploration and use of outer space should be for the benefit and in the interest of the entire international community, particularly the developing countries, for which international cooperation played an important role. With regard to the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, it was the view of his delegation that they must be observed, and that the use of nuclear power should be a last resort; it was necessary to monitor and control such activities.

2. Ecuador was also very concerned about the extent of space pollution, especially in the geostationary orbit, with regard to which it had adopted a clear and coherent position.

3. Mr. TELLES RIBEIRO (Brazil) expressed his full agreement with the measures adopted at the thirty-second session of the Subcommittee to guarantee effective utilization of conference services and supported the measures regarding a reduction of the time allocated for its work, on the understanding that such a decision would be taken on an ad hoc basis only and would not have a negative impact on the Subcommittee's ability to perform its primary task of perfecting international space law.

4. With regard to the question of the early review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, his delegation had noted with satisfaction the statement made by the United States delegation at the thirty-first session of the Scientific and Technical Subcommittee to the effect that the United States authorities had concluded that their practice was consistent with the guidelines set forth in the Principles approved by General Assembly resolution 47/68, and that consequently the United States would not be seeking an early review of the Principles. It was the understanding of the Brazilian delegation that any such revision should be undertaken only if the scientific and technical debate on the matter produced evidence that it was really necessary, and, moreover, that it should be geared to strengthening the safety levels provided by the Principles, given their significant environmental implications.

5. With regard to matters relating to the character and utilization of the geostationary orbit, the exchange of views that had taken place at the last session on document A/AC.105/C.2/L.192 provided a sound basis for future work, but there was room for exploring fresh approaches. Consideration might be given to the holding of a seminar on possible legal implications of the existence of space debris in the geostationary orbit, in conjunction with the thirty-fourth session of the Subcommittee. It was only logical to suppose that the public interest in environmental issues aroused by the United Nations Conference on Environment and Development held at Rio de Janeiro would eventually be extended to the outer space environment, and the Subcommittee must be prepared to deal with relevant questions before it was overtaken by them.

6. Regarding the definition and delimitation of outer space, his delegation hoped that the consultations under way would enable the suggested questionnaire to be finalized and sent to member States as a way of advancing consideration of the issues. The drafting of some introductory paragraphs for the questionnaire by the Chair, for examination by the Subcommittee, would be helpful in that regard.

7. At the previous session, a group of delegations including his own had submitted document A/AC.105/C.2/L.182/Rev.1 on the agenda item concerning the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States. Brazil would continue to seek to bring the positions of delegations closer together, and was confident that the Subcommittee would continue to move closer to a consensus on the very important question of promoting international cooperation in the peaceful uses of outer space between developed and developing countries, so that all mankind might benefit from the applications of outer space technology in the economic, social, cultural and environmental fields.

8. Finally, he would like to mention that a civilian Brazilian Space Agency had recently been set up to coordinate national space activities, and that the Brazilian Government had also publicly declared its intent to follow the guidelines of the Missile Technology Control Regime, which were designed to limit the risks of proliferation of weapons of mass destruction.

9. Mr. RASHKOW (United States of America) welcomed what the Chairman had said at the opening of the session (see document A/AC.105/C.2/SR.572) about improving the efficiency of the Subcommittee's work. The Subcommittee had made significant advances in improving its efficiency, but the United States did not entirely share the Chairman's optimistic evaluation of the progress that had been made in the utilization of conference services. There was a growing consensus among members of the Subcommittee that the matter should be addressed, but more remained to be done. At the thirty-second session of the Subcommittee, a number of meetings had either ended prematurely or been cancelled because of a lack of substantive participation or for other reasons. The United States welcomed the Chairman's reference to the measures adopted at the thirty-second session, including the agreement that consideration should be given to reducing the length of the present session if it appeared that the time allocated for the work was not necessary - without prejudice to the length of future sessions. The United States supported the view that a goal should be to complete the work by 31 March 1994, if practicable. In that regard, a significant contribution could be made by dramatically reducing the time allocated to the discussion of nuclear power sources.

10. The United States had completed its review of its position on the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, and had determined that, while the Principles had no binding effect, United States policy in practice was fully consistent with their overall objectives and intent. A rigorous safety review process took place before nuclear power sources were launched, and the Principles would not affect planned missions. For that reason, his delegation did not intend to make specific proposals for revision of the Principles at the present time. The Principles had brought great benefits, and there was no need for hasty consideration of revisions;

continued debate on the Principles at the present time was not a very fruitful use of resources.

11. The United States hoped that the time devoted to the other agenda items would also be reduced, although probably not to the same extent.

12. Mr. KINGHAM (Czech Republic) said that the Czech Republic, as a successor State of Czechoslovakia, had become the treaty party to all space law instruments previously ratified by the former federation. His Government considered it essential, for the sake of the future development of the national space programme, that the treaties should continue to apply without interruption. Research in the magnetosphere and the ionosphere had been carried out by Czechoslovakia by means of two satellites, the "MAGION 2" and the "MAGION 3", launched in 1989 and 1991. The Czech Republic had now become the launching State for those satellites. Two similar satellites, developed in collaboration with Austria, France, Germany, Poland, Slovakia, Romania and the Russian Federation, had been designed for the "INTERBALL" mission, the purpose of which was to study the physical mechanisms of solar wind energy accumulation in the magnetosphere, and energy dissipation in the auroral regions.

13. Turning to the question of the definition and delimitation of outer space, he noted that there was still no agreed definition of where airspace ended and outer space began, even though the two areas were subject to different legal regimes. One reason was the absence of any natural boundary between the two; another was the assumption that any safe and reasonably economical orbit was likely to be in outer space. His delegation would prefer to adopt a pragmatic approach, focusing on problems arising from the potential conflict of space law and air law in respect of specific activities, such as aerospace flights. He welcomed the idea of a questionnaire to help identify the practical needs of the international community in that respect.

14. With regard to the character and utilization of the geostationary orbit, he was glad to note that the paper submitted by Colombia did not compromise the principle of non-appropriation of outer space. It therefore represented a certain advance in comparison with previous proposals.

15. General Assembly resolution 48/39, paragraph 4 (a), endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, at its current session, should consider the question of early review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space. His delegation shared the view that revision of the Principles would be appropriate only if a substantial change occurred in the field of scientific and technical development. However, that should not prevent the Subcommittee from discussing possible new provisions to address specific unresolved problems, such as that proposed by the United Kingdom in the Scientific and Technical Subcommittee (see document A/AC.105/571, para. 59).

16. Mr. AVRAMENKO (Russian Federation) said he wished to outline the progress made in Russia in the legal regulation of space activities. A Law on Space Activities had been signed by the President of the Federation in August 1993. According to the new Law, the purpose of such activities was to enhance the welfare of Russian citizens, to promote the development and security of the

country, and to resolve global problems. The principles underlying space activities included: the equality of corporations and individuals with respect to participation in space activities; the accessibility of information about those activities; safety, including the protection of the environment; and cooperation with the international community in space affairs. The Law prohibited the placing and testing in space of nuclear weapons and other weapons of mass destruction, the use of space technology to influence the natural environment for military or other hostile purposes, and the pollution of space. All other space activities which were prohibited by international treaties to which the Russian Federation was a party were likewise prohibited.

17. In the Russian Federation, space activities were the responsibility of the Federal authorities. The Parliament decided on Russia's space policy, and adopted the federal space programme; the President was responsible for the implementation of the policy; and the Government was the executive arm for space operations. Space activities, whether for scientific or for economic purposes, were carried on under the aegis of the Russian Space Agency. Space activities for defensive purposes were carried on by the Ministry of Defence. In certain cases prescribed by law, the Ministry could mobilize any part of the infrastructure, including space technology.

18. The Law established a permissive regime for space activities for scientific and economic purposes. Activities carried on by corporations and individuals in the Russian Federation, or by foreign corporations and individuals under Russian jurisdiction, had to be licensed if they included the testing, manufacture, storage, preparation for launching or launching of space objects, or the sending of space missions. The Law also contained detailed regulations for the certification of space technology and for expert investigations of space activities.

19. Space activities were financed by a special appropriation from the budget of the Federation, apportioned among contractors carrying out State commissions. The new Law provided guarantees for foreign investors funding activities under the federal space programme. The Law also provided for the establishment of a national fund for space science and industry, to be constituted from budget appropriations and extrabudgetary funds, profits from space projects, insurance contributions from corporations and individuals, and voluntary contributions. The Fund's reserves were used to finance the federal space programme, to support innovative and conversion projects in space, to fund programmes using the findings of space ventures, to insure such ventures, and to eliminate the effects of accidents.

20. Space equipment could be operated either by its owners, or by other corporations and individuals by agreement with the owner. The components of the equipment might belong to a number of different corporations and individuals. A corporation operating space equipment which was the property of the Federation would ensure, under contract, that it could also be used by other interested corporations and individuals. The use and transfer of space technology was subject to the intellectual property rights protected by law. Work on space technology did not carry with it the obligation to transfer the technology to the client, unless the contract contained a clause to that effect. The ownership of products made in space lay with the corporations and individuals owning the components of the space technology used to produce them, unless otherwise stipulated. Likewise, information generated as a

result of space activity normally belonged to those who had generated it. Rights of jurisdiction and control over space objects, and rights of ownership of such objects, did not affect the legal status of the territory occupied by them in space.

21. With regard to space flights, the law provided that a space object launched by a foreign State could make one safe journey through Russian airspace for the purpose of launching into the Earth's orbit or into space, or for the purpose of returning to the Earth, provided the Russian authorities were informed in a timely manner of the time, place, trajectory and other circumstances of the flight.

22. The section of the Law dealing with international cooperation provided that international treaties of the Russian Federation on space activities must be ratified by the Parliament. It was also provided that the Russian Federation would help to develop international cooperation in space activities, and to resolve international legal problems associated with the exploration and utilization of outer space.

23. The last section of the Law dealt with issues of liability. There was a clause providing for compensation for direct loss or damage incurred as a result of space activities carried out in accordance with the law of the Russian Federation.

24. Mr. MARÍA CURIA (Argentina) said his delegation agreed that the present relaxed climate in international relations should be used to advance the work of the Subcommittee. His delegation was conscious of the importance of completing the progressive development of an international legal regime to govern space activities which took account of the interests of all States, and especially those of the developing countries.

25. With regard to the definition of outer space, he felt that the draft questionnaire prepared at the Subcommittee's previous session was very useful. As to the geostationary orbit, the working paper submitted by Colombia at the previous session (see document A/AC.105/544, annex IV) incorporated some important ideas which should enable progress to be made. Regarding space benefits, a revised working paper (A/AC.105/C.2/L.182/Rev.1) had been submitted to take into account comments made. Work on the topic should be pursued with a view to reaching a consensus.

26. He welcomed the start made in the Scientific and Technical Subcommittee on dealing with the question of space debris. The Legal Subcommittee should also take up the question. He supported the suggestion of the Brazilian delegation that a seminar should be held on that subject in conjunction with a session of the Subcommittee.

27. Turning to the organization of work, he said that his delegation favoured a measure of flexibility in the allocation of meeting time. The time allotted to agenda item 3 could be reconsidered, but that should not be allowed adversely to affect the other items on the agenda, which were of great importance for most delegations. He also suggested that the Subcommittee should begin thinking about the question of its headquarters to enable a consensus to be reached on that matter and on the question of rotating or not rotating the venues of its sessions.

28. Mr. SUAREZ (Mexico) said that his country wished to reiterate its suggestion made at the recent session of the Scientific and Technical Subcommittee that the Committee and its two Subcommittees should coordinate their work with the Conference on Disarmament. Paragraph 34 of General Assembly resolution 48/39 urged all States to contribute actively to the goal of preventing an arms race in outer space as an essential condition for promoting international cooperation in the exploration and use of outer space for peaceful purposes. Taking up an initiative of the Latin American and Caribbean Group, the Group of 77 had included in its working paper A/AC.105/C.1/L.199 explicit mention of the link between the peaceful use of outer space and efforts to prevent the proliferation of nuclear weapons. In his country's view, there should be no problem of form or substance to prevent the Committee and its two Subcommittees from beginning jointly to consider all the legal and technical issues relating to space debris, including its definition, jurisdiction and control and the liability for any damage that might be caused. Owing to the need to consolidate the legal regime in that area, his Government attached importance to establishing a boundary between airspace and outer space and considered that the issue should not be disregarded by the Legal Subcommittee merely because of its complexity. In Mexico's view, the working paper submitted by the Russian Federation on questions concerning the legal regime for space objects and the proposal submitted by Colombia concerning the geostationary orbit (see document A/AC.105/544) provided a good basis for discussion.

29. His Government would like to see the work of the Subcommittee expanded to take account of matters relating to the strengthening of the Convention on Registration of Objects Launched into Outer Space, means of ensuring universal application of the legal regime relating to outer space and the steps needed to turn the Principles Relating to Remote Sensing of the Earth from Outer Space into an international agreement.

30. Mr. McRAE (Canada) expressed his agreement with the comments made by the representatives of Brazil and Argentina, among others, regarding the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, and particularly with the view that there should be scientific and technical evidence of a need for a review of the Principles before any such exercise was undertaken. Any amendment to the Principles would reopen old debates and might well jeopardize the present compromise. States needed time to test the Principles in practice. He also associated himself with the views expressed by the representative of the United States of America regarding the amount of time to be devoted to the subject at the current session and questioned the need to re-establish the Working Group on Nuclear Power Sources. The Subcommittee should perhaps reconsider its decision in that regard so that the duration of the present session could be reduced.

31. He welcomed the interesting suggestion put forward by the representative of Brazil concerning a seminar on space debris. Though the representative of Brazil had not suggested placing an item in that regard on the agenda of the Subcommittee, he would be prepared to consider that possibility. The environmental aspects of the issue should be addressed. He would be interested to hear further ideas on the subject of the suggested seminar.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (agenda item 4) (continued) (A/AC.105/404, 544 and 547; A/48/20)

32. Mr. RAMIREZ LANDAZURI (Ecuador) said that the submission of a number of working papers during recent sessions was evidence of renewed interest in the issues covered by agenda item 4. Further discussion might open the way to the formulation of principles on the subject, in view of the fact that the Subcommittee had come up with principles in other areas despite an initial absence of unanimity.

33. His country considered that account should be taken of the need to set up a special sui generis legal regime to regulate access to and use of the geostationary orbit, paying due attention to the special gravitational characteristics that were found only in the equatorial plane, putting equatorial countries in a special position. The legal regime in question should take account of the rights of all States to benefit from the orbit as well as the particular needs of developing countries, including equatorial countries.

34. His country did not regard the geostationary orbit as an integral part of outer space. There existed no valid and satisfactory definition of outer space that could be invoked to assert that the geostationary orbit was part of outer space. Healthy and transparent international cooperation was an important means of guaranteeing that the geostationary orbit would be used exclusively for peaceful purposes for the benefit of all mankind. Such cooperation should provide for the future needs of developing countries, including those lying under the orbit.

35. Access to and the preservation, use and benefits of the geostationary orbit, which was a limited natural resource, were of great interest to the international community as a whole. It was essential to avoid over-exploitation and saturation of the orbit and its pollution by space debris. Shortly before the end of their life-span, therefore, satellites should be transferred to a disposal orbit. The problem of the saturation of the orbit made it necessary for the international community to devise safeguards to ensure the possibility of future access to the orbit for all States. The working paper submitted by Colombia (A/AC.105/C.2/L.192) provided a good basis for continued efforts to carry out the mandate given by the General Assembly. There should be close coordination with ITU, whose work was eminently of a technical nature, limited to telecommunications and frequencies, while the task of the Committee on the Peaceful Uses of Outer Space and the Legal Subcommittee was to study the legal aspects of the geostationary orbit. In the development of rules, it must be borne in mind that the orbit was a limited natural resource, that all countries should enjoy equitable access to it and that special account should be taken of the interests of developing countries and equatorial countries. As the geostationary orbit could become saturated, access to and the use and benefits of the orbit should clearly not be limited to countries with certain technical and financial capabilities but must also take account of the aspirations of developing countries and the interests of equatorial countries. It was

essential to devise a preferential scheme that would put an end to the present inequitable situation. Clear equitable rules should be devised to enable the benefits of space exploration to be shared among all countries regardless of their state of development and technological know-how.

36. His delegation supported the suggestion of the Brazilian delegation for the holding of a seminar to consider the implications of space debris in the geostationary orbit.

37. Mr. BARSEGOV (Russian Federation) said that the discussions on agenda item 4 now seemed to be entering a new phase. The Colombian working paper (A/AC.105/C.2/L.192) marked a new stage in the search for possible solutions. The new ideas that were now being put forward should help to bring the discussion out of its current impasse, and open up new possibilities for agreement.

38. In his view, the problem of delimitation of outer space should be capable of solution. The chief concern should be to achieve a proper balance between the interests of States and the requirements of future space activities.

39. The presence in space of a variety of aerospace objects should not serve as a pretext for refusing to set limits. Delimitation was already established practice in the maritime field. Thus, the seas were divided into a number of recognized categories, each with its particular legal status: internal waters, the territorial sea, exclusive economic zones, archipelagic waters, the open seas, and seas that were regarded as part of the common heritage. That delimitation did not interfere with freedom of navigation. There was no reason why outer space should not be separated from airspace and some degree of regulation established over activities carried out in both spheres.

40. The Subcommittee should not be envisaging a single international regime, which from the legal standpoint would be an impossibility, but rather a variety of regimes governing different areas. There was as yet no agreed view as to the altitude at which limits should be set, but the Subcommittee could at least go some way towards reaching a solution. A start could be made by undertaking a study of all proposals put forward hitherto, and analysing the arguments advanced in favour of one or the other. Criteria could be developed for the selection of solutions. As far as use of the intermediate zone was concerned, it might be possible, pending agreement on a specific definition, to try to develop a special regime which would contain elements of existing international law. The intermediate zone, like outer space, would not belong to individual nations. Such a special regime would provide for the monitoring of man-made objects in the zone, and would oblige the launching State to provide notification to States over whose territories the object would pass, concerning, for instance, duration of passage, power sources of the apparatus, and the purpose of the flight. The format for such a notification would be modelled on the regime governing airspace.

41. It might be asked why a country such as his own, which was actively involved in space activities, should be raising the question of delimitation, since solution of that question might limit the area available for its activities. He wished to stress that his country's current position on the issue of delimitation was the result of a careful reassessment of the policy it had pursued over many years. With all the technological capabilities at

its disposal, the Russian Federation could have confined itself to working within its own national rules, and disregarded the need to establish an international regime. However, it believed that the interests of society in general, and in the final analysis the interests of every individual country, called for broader, more objective and longer-term solutions.

42. Mr. FADYL (Indonesia) said that useful discussions had taken place at the previous session. However, in view of the rapid development of outer space technology, as well as the complexity of the problems involved, he believed that further consultations should be held to clarify areas of concern to some delegations.

43. He wished to reiterate his delegation's concern at the fact that the geostationary orbit was becoming increasingly overcrowded with satellites. The orbit had now been recognized by all Member States as a limited natural resource, and there was a need to intensify discussion aimed at the establishment of a special legal regime to govern it. He welcomed the Colombian working paper (A/AC.105/C.2/L.192) as a basis for establishing principles which could regulate - without prejudice to the role of the International Telecommunication Union - the utilization of the orbit for the benefit of all States, and in particular of the developing countries.

The meeting rose at 11.45 a.m.